# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**RSA No. 95 of 1995.**

**Reserved on: 14.5.2007.**

**Date of decision: 29.5.2005.**

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Smt. Ramo ... Appellant

Versus

Smt. Sito Devi ...Respondents

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*Coram :*

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr. I.D. Bali, Senior Advocate with Ms. Meenakshi Pathania, Advocate.

For the respondent: Mr. Ajay Mohan Goel, Advocate.

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**V.K. Ahuja, J.**

This is an appeal filed by the appellant against the judgment and decree of the Court of learned Additional District Judge, Shimla dated 4.8.1994 vide which the judgment and decree dated 31.5.1991 of learned Sub Judge, Theog, was affirmed vide which the suit for declaration and injunction filed by the appellant against the respondent was dismissed.

Briefly stated the facts of the case are that the appellant hereinafter referred to as the plaintiff filed a suit for declaration and injunction as against the respondent hereinafter also referred to as the defendant. The dispute related to the succession in regard to the

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[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

estate of one Smt. Mathi who was the mother of the plaintiff who claimed that she was the only legal heir of Smt. Mathi and as such, was owner in possession of the suit property. The plaintiff had challenged the mutations to the estate of Smt. Mathi in favour of the defendant who had allegedly bequeathed her property in favour of the defendant by an unregistered Will. The defendant is the daughter of plaintiff from her first husband. The defendant pleaded that when she was a child, the plaintiff contracted another marriage with one Shiv Ram and defendant was left with Smt. Mathi, her grand-mother who looked after her, performed her marriage, and she and her husband had been looking after Smt. Mathi who executed the Will on 27.12.1986 in favour of the defendant and as such, she had inherited the estate of Smt. Mathi.

The learned trial Court framed issue in regard to the valid Will in favour of defendant and other issues. The suit was tried by the learned trial Court who held that the Will in question was genuine and those findings were affirmed by the learned first appellate Court.

An appeal was preferred by the appellant which was admitted by this Court on 26.3.1997 but the substantial questions of law on which the appeal was admitted were not formulated by the Hon'ble Judge who admitted the appeal, though as per the law laid down by the Hon'ble Apex Court, substantial questions of law have to be framed at the time of admitting the appeal. Therefore, the substantial questions of law formulated at page-8 of the appeal shall be deemed to have been framed by this Court while admitting the appeal.

The submissions made by the learned counsel for the appellant were that the plaintiff was the only natural heir of the deceased being her daughter and no valid reasons were given in the

Will for disinheriting her from the estate of her mother which is a suspicious circumstance in itself. It was also submitted that the deceased was not in sound disposing mind and was not able to hear and see and as such, this suspicious circumstance has not been removed by the defendant. It was also submitted that the plaintiff's husband was also a signatory to the Will but he had signed at on the assurance that the property will go to his wife only. It was also submitted that there is evidence to show that the deceased was also living with the plaintiff at times and since the suspicious circumstances surrounding the Will have not been removed as there is also evidence to show that the Will was written at the instance of Pradhan and as such, the findings of both the Courts below are liable to be dismissed.

On the other hand, the learned counsel for the respondent has supported the impugned judgments for the reasons given therein supplementing it by the submissions that the second appeal can be heard only if there are substantial question of law not even question of law and since no question of law was involved, the appeal was liable to be dismissed.

The learned counsel for the appellant to substantiate his submissions about the Will was not genuine had relied upon the following decisions:-

Then decision in **Baru Ram and others** Vs. **Smt. Kishani Devi, 1992(1) Sim. L.C. 115** was relied upon wherein it was held that the registration of the will does not create any presumption of its genuineness, which is to be proved independently and statement of the Registrar is only a piece of evidence which is to be assessed to judge how far it proves that the execution of will is in accordance with

section 63 of Indian Succession Act. It is to be kept in mind that the Registrar cannot be statutory attesting witness.

The decision in **Johri Bazar,Jaipur** Vs. **Smt. Chhoti and others**, **(1990) 1 Supreme Court Cases 266** was relied upon wherein it was held that the Will in the present case, constituting the plaintiff as a sole legatee with no right whatever to the testator's wife seems to be unnatural. It casts a serious doubt on genuineness of the Will. The will has not been produced for very many years before the Court or public authorities even though there were occasions to produce it for asserting plaintiff's title to the property. The plaintiff was required to remove these suspicious circumstances by placing satisfactory material on record. He has failed to discharge his duty. The will has therefore to be rejected as not genuine.

The decision in **Smt. Guro** Vs. **Shri Atma Singh and others**, **1992(1) S.L.J. 864**, shows that here was recital in Will regarding illness. Death occurred within eight days of execution of the Will. The testator being thumb impression instead of signature will was held to be not a genuine document.

The decision in **Meenakshiammal (Dead) through LRs. and others** Vs. **Chandrasekaran and another**, **(2005) 1 Supreme Court Cases 280** shows that question of execution of Will by the testator in a sound and disposing state of mind is purely a question of fact and when the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation and mere presence of motive and opportunity are not enough.

All the above decisions are based upon the facts of the cases and the law is clear that the suspicious circumstances if any,

are to be removed by the propounder of the Will. Coming to the facts of the case it is not disputed that the plaintiff is the daughter of deceased, while defendant is the daughter of plaintiff and as such, was grand-daughter of Smt. Mathi. It was observed by the learned trial Court in pages 3 and 4 of the judgment above that the defendant in her infancy was left in the care of Smt. Mathi the mother of the plaintiff who reared her and married off her. The learned first Appellate Court in para-12 of the judgment has observed as under:-

> "None of the PWs have been able to say specifically that Sito was not staying with Mathi and was not being looked after by her. On the contrary they have tried to show that Sito used to stay with Mathi as well as with Ramo. Similarly the PWs have not categorically disputed that the marriage of Sito was solemnized by Mathi and again the PWs have just stated that it was solemnized by both. Even if it is considered that Smt. Sito was jointly being brought up by Mathi and Ramo yet it is apparent that Smt. Sito was not a complete stranger to Mathi and therefore her intention of leaving the proerty to her gand daughter can be held justified, especially when it has come in evidence that Smt. Sito and her husband were staying in the same village and were looking after Smt. Mathi till her death."

Apart from the above, it is also clear that the Will was also attested by Shiv Ram husband of the plaintiff which rather proved that the Will was a genuine document. A plea was also taken that two of the witnesses have signed at the instance of Pradhan, but there is a finding recorded by the learned Appellate Court that the Will was dictated to him by the Pradhan, but the scribe has stated that it was as per the saying of Smt. Mathi which does not create any suspicion about the document. There is no evidence to show that the

deceased was so ill which had affected her mental capacity to execute the Will as was observed by the learned first Appellate Court at para-11. The defendant had examined the scribe, two marginal witnesses and there was evidence of husband of the plaintiff who was also a witness to the Will. The learned first Appellate Court had also observed that in case the Will was forged after the death of Mathi as were suggested to the witnesses, how the husband of the plaintiff could have signed the document. Thus, both the Courts below have given valid reasons to hold that the Will in question was a genuine one. The learned first Appellate Court had also observed that the plaintiff had also been given a share vide the Will in the land and houses, khalyan and moveable property which was to be inherited by both the persons. The mere fact that the plaintiff was disinherited from some landed property in itself was not sufficient to hold that the Will was shrouded by suspicious circumstances when the defendant was not a stranger but the daughter of the natural heir i.e. the plaintiff herself. No substantial question of law is involved in the facts of the case and not even a question of law for reappraisal of the evidence as discussed by both the Courts below. The Courts below have given valid reasons for upholding the genuineness of the Will and as such, there is no merit in the appeal filed by the appellant, which is liable to be dismissed and the same is dismissed accordingly. The parties are left to bear their own costs. Copy of the judgment alongwith the record be sent to the concerned Court.

**( V.K. Ahuja ),**
**Judge**

**May 29, 2007**
**(BSS)**